

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DEUTSCHE BANK NATIONAL TRUST
COMPANY,

Plaintiff,

v.

5:16-cv-1266
(TJM/ATB)

CHRISTINA BUSSONE, et al.,

Defendants.

Thomas J. McAvoy, SR. U.S.D.J.

DECISION and ORDER

The Court referred this mortgage foreclosure action, which was removed to this Court from the Supreme Court of Onondaga County, New York, to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York.

Defendant Cuse Holdings, LLC, filed the notice of removal. Non-party John L. Bussone, claiming to represent that defendant *pro se*, filed a motion to proceed *in forma pauperis* on behalf of Cuse Holdings. After reviewing the Complaint, the notice of removal, and Bussone's application to proceed *in forma pauperis*, Magistrate Judge Baxter recommended that the Court remand the case *sua sponte* to the Supreme Court of Onondaga County.

Cuse Holdings filed objections to the Report and Recommendation. When

objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, this Court has determined to accept and adopt the recommendations of Magistrate Judge Baxter for the reasons stated in the Report-Recommendation. The notice of removal admits that the such notice was filed untimely. Bussone's request to submit a revised application to proceed *in forma pauperis* would therefore be futile. The case is not properly in this Court.

Accordingly:

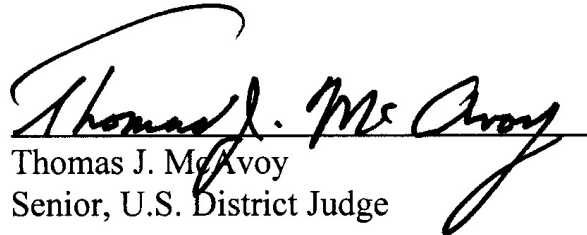
Cuse Holding's objections to the Amended Report-Recommendation, dkt. # 6, are hereby **OVERRULED**. The Report-Recommendation, dkt. # 5, is hereby adopted, as follows:

1. The action is REMANDED SUA SPONTE to the Supreme Court of Onondaga County, New York pursuant to 28 U.S.C. § 1447(c); and
2. The Clerk of Court is directed to:
 - (a) mail a certified copy of the Remand Order to the Clerk of the Supreme Court of Onondaga County pursuant to 28 U.S.C. § 1447(c);
 - (b) close this case;

(c) serve notice of the entry of the Order pursuant to Federal Rule of Civil Procedure 77(d)(1) on all parties as provided in Federal Rule of Civil Procedure 5(b) and record such service on the docket; and
(d) serve notice on Mr. Bussone.

IT IS SO ORDERED.

Dated: November 21, 2016


Thomas J. McAvoy
Senior, U.S. District Judge